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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

DANIEL JAMES CUMMINS,

Petitioner,

vs.

MOISES BECERRA, Field Office Director,
ICE/San Francisco;
MINGA WOFFORD Warden, Mesa Verde ICE
Processing Center;
KRISTI NOEM, Secretary of Homeland
Security;
PAMELA BONDI, Attorney General of the
United States

Respondents.

Case No. 1:25-cv-01853-DC-AC

**EMERGENCY MOTION TO ENFORCE
AND MODIFY TEMPORARY
RESTRAINING ORDER FOR
IMMEDIATE RELEASE UNDER FED. R.
CIV. P. 65(b)**

DATE:

TIME:

COURT: Hon. Dena Coggins

**EMERGENCY MOTION TO ENFORCE AND MODIFY TEMPORARY
RESTRAINING ORDER FOR IMMEDIATE RELEASE UNDER FED. R. CIV. P. 65(b)**

TO THE HONORABLE DENA M. COGGINS, UNITED STATES DISTRICT JUDGE:

Petitioner **Daniel James Cummins**, by and through undersigned counsel, respectfully
moves this Court to **enforce and modify its previously issued Order** to order Petitioner's
immediate release from ICE custody, on the grounds that the Executive Office for Immigration
Review (EOIR) has acted in **bad faith** and is now actively **undermining this Court's Order** and
Petitioner's **constitutional rights** to a fair bond hearing.

Petitioner's physical and mental condition continue to deteriorate in detention. ICE has
failed to provide constitutionally adequate medical care for his rare and life-threatening lung
**EMERGENCY MOTION TO ENFORCE AND MODIFY TEMPORARY RESTRAINING
ORDER FOR IMMEDIATE RELEASE UNDER FED. R. CIV. P. 65(b)**

disease (Chronic Pulmonary Aspergillosis caused by Valley Fever), and he was **physically assaulted** in custody in December. The IJ who will preside over Petitioner's scheduled **January 2, 2026**, bond hearing **refused to continue his Individual Hearing** despite compelling reasons, including this Court's TRO and pending habeas, ongoing communication difficulties due to illness, and the current federal ongoing litigation.

This motion respectfully requests that this Court:

1. **Modify the TRO** to order Petitioner's immediate release from custody under its equitable powers and the All Writs Act;

2. Alternatively, **enjoin EOIR from conducting any Individual or bond hearing** before another IJ can be assigned, or until due process is guaranteed.

MEMORANDUM OF POINTS AND AUTHORITIES

I. PROCEDURAL BACKGROUND

- Petitioner is a long-term resident of the United States, admitted under the **Visa Waiver Program (VWP)** in 2018.

- He has a **pending asylum claim** and is **engaged to a U.S. citizen**.

- Petitioner suffers from **Chronic Pulmonary Aspergillosis**, a **life-threatening fungal lung disease** that requires specialized care unavailable outside the U.S.

- On **December 11, 2025**, Petitioner filed a **Petition for Writ of Habeas Corpus** and a **Motion for Emergency TRO**.

- On **December 22, 2025**, this Court **GRANTED the TRO in part** and **ordered ICE to schedule a bond hearing no later than January 6, 2026**.

- Petitioner filed a **Motion to Shorten Time** to ensure meaningful access to a bond hearing, bond hearing was scheduled for January 2, 2026, at 10:00 am.

- Despite this, EOIR **denied Petitioner's Motion to Continue his Individual Hearing**, which is now set for **January 13, 2026**, less than two weeks away and without sufficient time for preparation or medical stabilization.

II. LEGAL STANDARD

Under **Federal Rule of Civil Procedure 65(b)** and the **All Writs Act**, 28 U.S.C. § 1651, district courts may issue emergency injunctive relief to enforce or protect their jurisdiction and prevent irreparable harm. Courts may also **modify existing TROs to "prevent manifest injustice."** (*See A&M Records, Inc. v. Napster, Inc.*, 284 F.3d 1091, 1098 (9th Cir. 2002)).

Further, courts retain **equitable power to release detainees** where continued detention violates the Constitution or prior court orders. (*See Fraihat v. ICE*, 445 F. Supp. 3d 709 (C.D. Cal. 2020); *Jones v. Wolf*, 467 F. Supp. 3d 74 (W.D.N.Y. 2020)).

III. GROUNDS FOR IMMEDIATE RELEASE

A. EOIR's Refusal to Continue the Individual Hearing Reflects Judicial Bias and Undermines This Court's Order

Despite the clear directives of this Court's TRO and the existence of a pending habeas petition, the **Immigration Judge assigned to Petitioner's case Judge Katie Mullins denied a Motion to Continue** the Individual Hearing, **without acknowledging:**

- The Court's TRO and pending federal litigation;
- The medical crisis and recent assault suffered by Petitioner;
- Communication difficulties in preparing the defense;
- The critical need for federal-court-ordered bond proceedings first.

This reflects a **blatant disregard for this Court's equitable authority**, and suggests **prejudgment** of the bond hearing also assigned to Judge Mullins thereby tainting the proceedings.

B. Petitioner Has Already Suffered Irreparable Harm, and More Is Imminent

Petitioner has been in ICE custody since **March 2025**. While detained:

- He has been **denied specialist care** for his rare lung disease;
- He was **assaulted** in custody, with **no access to therapy or trauma counseling**;
- He has **lost over 20 pounds** and experiences **chronic coughing, chest pain**, and breathing difficulty;
- His condition is worsening, and **ICE lacks adequate resources** to treat him.

The Ninth Circuit has repeatedly held that continued detention in the face of severe medical harm constitutes **irreparable injury warranting immediate release**.

See:

- **Fraihat v. ICE**, 16 F.4th 613 (9th Cir. 2021)
- **Sanchez v. McAleenan**, 2020 WL 2744586 (C.D. Cal. Apr. 30, 2020)
- **Ortuño v. Jennings**, 2020 WL 1701724 (N.D. Cal. Apr. 8, 2020)

These cases support the urgent relief sought here.

C. This Court Has Inherent Power to Protect Its Orders and Ensure Due Process

The **All Writs Act** empowers this Court to **enforce its TRO** and **prevent obstruction** by subordinate administrative courts. See:

- **FTC v. Dean Foods Co.**, 384 U.S. 597, 603 (1966)
- **United States v. New York Tel. Co.**, 434 U.S. 159, 172 (1977)

Moreover, **Zadvydas v. Davis**, 533 U.S. 678 (2001), held that **prolonged immigration detention without meaningful opportunity for release** is constitutionally infirm.

Here, the **combination of ICE's medical neglect, the biased denial of a routine continuance, and subversion of this Court's TRO** all converge to **warrant immediate judicial intervention**.

IV. REQUESTED RELIEF

Petitioner respectfully requests that this Court:

1. **Immediately Order the Release** of Daniel James Cummins from ICE custody under the authority of its TRO and equitable powers;
2. Alternatively, **enjoin the January 2, 2026, bond hearing and January 13, 2026, Individual Hearing**, and require that another IJ be assigned who can conduct a constitutionally compliant review;
3. Award **any other just and proper relief**,

Dated: **December 30, 2025**

Respectfully submitted,

/S/RobertG.Cummings
Robert G. Cummings
Attorney for Petitioner